REMARKS

Claims 1-34 are pending in the application. Claims 1 and 17 have been amended. Reconsideration of this application is respectfully requested.

It is noted with appreciation that the Office Action has indicated that claims 7, 10, 23 and 25 would be allowable if rewritten to include all the limitations of the base claim and of any intervening claims.

The Office Action rejects claims 1-31 under the second paragraph of 35 U.S.C. 112 as indefinite because there is a lack of antecedent basis in claims 1 and 17 for "plurality of resources requirement". Claims 1 and 17 have been amended to recite "said resource requirement tables of said plurality of content providers". It is submitted that amended claims 1 and 17 and their dependent claims are fully compliant with the second paragraph of 35 U.S.C. 112. Accordingly, it is submitted that the rejection of claims 1-31 under the second paragraph of 35 U.S.C. 112 is obviated by the amendment.

The Office Action rejects claims 1, 8, 11, 15, 26, 30, 32 and 33 under 35 U.S.C 103(a) as unpatentable over an article entitled "Providing Differentiated Service from an Internet Server", by Xiangping Chen et al., hereafter Chen, in view of U.S Patent No. 6,577,628 to Hejza, hereafter Hejza, and further in view of what would have been obvious to one of ordinary skill in the art at the time the invention was made.

This rejection is erroneous. First, the rejection is based on Chen and Hejza and the conclusion of what would have been obvious to one of ordinary skill in the art. The conclusion is not evidentiary. Therefore, the rejection, as stated, is erroneous.

Second, Chen, Hejza and the Official Notice each lack an important element of independent claims 1 and 32, namely, the combination of creating for each of plural content providers at least one service level table and at least one resource requirement table, merging the resource requirement table into a merged resources requirement table and assigning incoming requests in accordance with the service level tables and the merged resource requirement table. In fact, neither Chen nor Hejza teach this combination, whether or not the data is in a table format. It is noted that neither Chen nor Hejza teaches that the service level data or system resource data is in a table form.

The Official Notice merely refers to merging tables as taught by Poublan at column 42, lines 38-51. Since neither Chen nor Hejza teach the data in table form, the table merging of the Official Notice is irrelevant, especially since neither the Official Notice nor Poublan teaches a system that offers differentiated services.

Moreover, Chen and Hejza do not teach a system that provides differentiated services of a plurality of content providers. Chen and Hejza each teach a server that handles incoming requests without regard to the service levels or resource requirements of a plurality of content providers. It is noted in Chen's system that the task servers are not content providers, as alleged by the Examiner, but rather are merely servers which run tasks as assigned by the scheduler Q.

The assertion of Official Notice is hereby traversed and challenged. The Examiner appears to be using Official Notice to expand a teaching in the art, namely, Poublan's teaching at column 42, lines 43-51. Poublan's teaching does not support the Examiner's expanded teaching of the Official Notice, particularly the phrase, "based on any policy". For this reason, it is respectfully requested that the assertion of Official Notice is erroneous and should be withdrawn.

The Office Action provides no motivation for one of ordinary skill in the art to combine the Official Notice with Chen and Hejza. The Office Action suggestion to use the table merging of the Official Notice in combination with the Chen and Hejza is improperly based on the hindsight of Applicants' disclosure. Such hindsight reconstruction of the art cannot be the basis of a rejection under 35 U.S.C. 103. The prior art itself must suggest that modification or provide the reason or motivation for making such modification. In re Laskowski, 871 F.2d 115, 117, 10 USPQ 2d 1397, 1398-1399 (CAFC, 1989). "The invention must be viewed not after the blueprint has been drawn by the inventor, but as it would have been perceived in the state of the art that existed at the time the invention was made." Sensonics Inc. v. Aerosonic Corp. 38 USPQ 2d 1551, 1554 (CAFC, 1996), citing Interconnect Planning Corp. v. Feil, 774 F. 2d 1132, 1138, 227 USPQ 543, 547 (CAFC, 1985).

For the reasons set forth above, it is submitted that the rejection of claims 1, 8, 11, 15, 26, 30, 32 and 33 under 35 U.S.C. 103(a) is erroneous and should be withdrawn.

The Office Action rejects claims 1-6, 8, 9, 11-22, 24 and 26-34 under 35 U.S.C 103(a) as unpatentable over U.S Patent No. 6,553,413 to Leighton et al., hereafter Leighton, in view of Hejza and further in view of what would have been obvious to one of ordinary skill in the art at the time the invention was made.

This rejection is erroneous. First, the rejection is based on Leighton and Hejza and the conclusion of what would have been obvious to one of ordinary skill in the art. The conclusion is not evidentiary. Therefore, the rejection, as stated, is erroneous.

Second, Leighton, Hejza and the Official Notice each lack an important element of independent claims 1, 17 and 32, namely, the combination of creating for each of plural content providers at least one service level table and at least

one resource requirement table, merging the resource requirement table into a merged resources requirement table and assigning incoming requests in accordance with the service level tables and the merged resource requirement table. In fact, neither Leighton nor Hejza teach this combination, whether or not the data is in a table format. It is noted that neither Leighton nor Hejza teaches that the service level data or system resource data is in a table form.

The Official Notice merely refers to merging tables as taught by Poublan at column 42, lines 38-51. Since neither Leighton nor Hejza teach the data in table form, the table merging of the Official Notice is irrelevant, especially since neither the Official Notice nor Poublan teaches a system that offers differentiated services.

Moreover, Leighton and Hejza do not teach a system that provides differentiated services of a plurality of content providers. Leighton and Hejza each teach a server that handles incoming requests without regard to the service levels or resource requirements of a plurality of content providers.

The assertion of Official Notice is hereby traversed and challenged. The Examiner appears to be using Official Notice to expand a teaching in the art, namely, Poublan's teaching at column 42, lines 43-51. Poublan's teaching does not support the Examiner's expanded teaching of the Official Notice, particularly the phrase, "based on any policy". For this reason, it is respectfully requested that the assertion of Official Notice is erroneous and should be withdrawn.

The Office Action provides no motivation for one of ordinary skill in the art to combine the Official Notice with Leighton and Hejza. The Office Action suggestion to use the table merging of the Official Notice in combination with the Leighton and Hejza is improperly based on the hindsight of Applicants' disclosure. Such hindsight reconstruction of the art cannot be the basis of a rejection under 35 U.S.C. 103. The prior art itself must suggest that modification

or provide the reason or motivation for making such modification. In re Laskowski, 871 F.2d 115, 117, 10 USPQ 2d 1397, 1398-1399 (CAFC, 1989). "The invention must be viewed not after the blueprint has been drawn by the inventor, but as it would have been perceived in the state of the art that existed at the time the invention was made." Sensonics Inc. v. Aerosonic Corp. 38 USPQ 2d 1551, 1554 (CAFC, 1996), citing Interconnect Planning Corp. v. Feil, 774 F. 2d 1132, 1138, 227 USPQ 543, 547 (CAFC, 1985).

For the reasons set forth above, it is submitted that the rejection of claims 1-6, 8, 9, 11-22, 24 and 26-34 under 35 U.S.C. 103(a) is erroneous and should be withdrawn.

The Office Action cites a number of patents and other references that were not applied in the rejections of the claims. These patents have been reviewed, but are believed to be inapplicable to the claims.

It is respectfully requested for the reasons set forth above that the rejections under 35 U.S.C. 112 and 35 U.S.C. 103(a) be withdrawn, that claims 1-34 be allowed and that this application be passed to issue.

Respectfully Submitted,

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Paul D. Greeley
Reg. No. 31,019
Attorney for Applicants
Ohlandt, Greeley, Ruggiero & Perle, L.L.P.
One Landmark Square, 10th Floor
Stamford, CT 06901-2682
(203) 327-4500